IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 701 OF 2005

1. Shri Kanchan Ganpat Patil
and anr. .. Appellants

Vs.

1. The Maharashtra Housing and Area
Development Authority and Ors. .. Respondents

Mr. A.S. Khandeparkar i/by M/s. Khandeparkar and Associates for appellants.

Mr. A.A. Kumbhakoni, Sr.Counsel with Ms. Geeta Mulekar for Respondent No.1.

Mr. Vineet B. Naik with Ms. Krishna Tanna with Mr. S.B. Pawar i/by M/s. S.K. Legal and Associates for Respondent Nos.2 and 3.

Ms. Geeta Joglekar for Respondent No.4.

CORAM: B.H. MARLAPALLE, J.

Date : October 03, 2005.

P.C.:

1. Heard Mr. Khandeparkar the learned counsel for the appellants-plaintiffs and Mr. Kumbhakoni the learned counsel for the respondent no.1, Mr. Naik the learned counsel for respondent nos.2 and 3 and Ms. Joglekar, the learned counsel for respondent no.4.

2. This appeal arises from the order dated 1/6/2005 passed by the learned Judge of the City Civil Court at Mumbai rejecting the prayer for ad-interim relief in Notice of Motion No.2069 of 2005 filed in S.C. Suit under Stamp No.2558 of 2005. By the order dated 2/8/2005 while issuing notices to the respondents an order of status quo was passed and it has been continued from time to time.

3. The plaintiffs are residents of D.N. Nagar Utsav Co-Operative Housing Society Ltd., Andheri (West) and they claim that plot no.195 survey no.106/A and CTS No.195 is reserved for public purpose, namely, garden to the extent of 800 sq.mtrs. They have, therefore, approached the trial court for the relief of declaration and permanent injunction in respect of the said plot.

4. Whereas it is the case of the respondents that CTS No.195 (Part) was never reserved as per the

sanctioned development plan and they contend that the suit filed by the plaintiffs is based on a working plan made by the present respondent no.1. The claims and counter claims made by the respective parties can be more expediently gone through by the trial court and in any case this appeal has been filed against an order refusing the prayer for ad-interim relief.

5. The appeal is, therefore, disposed off in terms of the following directions :-

(a) The respondents-defendants to file their reply in the Notice of Motion, if not done so as at present, on or before 31st October, 2005.

(b) The Notice of Motion shall be heard and decided on its own merits by 31st December, 2005.

(c) Any development undertaken on the suit plot by respondent nos.2 and 3 shall be

subject to the decision in the Notice of Motion and they should not claim any equity if the Notice of Motion is decided against them.

. Writ to go to the court below forthwith. Certified copy is expedited.

(B.H. Marlapalle,J.)